



# STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

# DRAFT

Date Amended:	05/03/11	Bill No:	<a href="#">Senate Bill 364</a>
Tax Program:	Sales and Use Tax	Author:	Yee
Sponsor:	Author	Code Sections:	RTC 6372
Related Bills:		Effective Date:	01/01/12

## BILL SUMMARY

Among other things, with respect to any business tax incentive enacted on or after January 1, 2012, this bill would impose a penalty on a qualified taxpayer up to the amount of the business tax incentive benefitted by that taxpayer, as specified, if the taxpayer has a net decrease in the number of full-time employees, as described.

### Summary of Amendments

Since the previous analysis, this bill was amended to define a “qualified taxpayer” to mean a manufacturer or a person that engages in research and development (R & D) activities in this state that benefits from a business tax incentive.

## ANALYSIS

### CURRENT LAW

Under existing law, California imposes a sales tax on a retailer's gross receipts from the retail sale of tangible personal property in this state, unless the sale is specifically exempt or excluded from taxation by statute. This tax is imposed on the retailer who may collect sales tax reimbursement from the customer if the contract of sale so provides. A use tax is imposed on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer. The use tax is imposed on the purchaser, and unless that purchaser pays the use tax to a retailer registered to collect the California use tax, the purchaser is liable for the tax, unless the use of that property is specifically exempted or excluded from tax. The use tax is the same rate as the sales tax.

Beginning July 1, 2011, the statewide sales and use tax rate (7.25%) imposed on taxable sales and purchases of tangible personal property is made up of the following components (additional transactions and use taxes (also known as district taxes) are levied by various local jurisdictions and are not reflected in this chart):

Rate	Jurisdiction	Purpose/Authority
5.00%	State (General Fund)	State general purposes (Revenue and Taxation Code (RTC) Sections 6051, 6051.3, 6201, and 6201.3)
0.25%	State (Fiscal Recovery Fund)	Repayment of the Economic Recovery Bonds (RTC Sections 6051.5 and 6201.5, operative 7/1/04)
0.50%	State (Local Revenue Fund)	Local governments to fund health and welfare programs (RTC Sections 6051.2 and 6201.2)
0.50%	State (Local Public Safety Fund)	Local governments to fund public safety services (Section 35, Article XIII, State Constitution)

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Rate	Jurisdiction	Purpose/Authority
1.00%	Local (City/County) 0.75% City and County 0.25% County	City and county general operations (RTC Section 7203.1, operative 7/1/04); Dedicated to county transportation purposes
7.25%	Total Statewide Rate	

The 1% General Fund portion imposed under Sections 6051.7 and 6201.7 is set to expire on 6/30/11.

### PROPOSED LAW

This bill would add Revenue and Taxation Code Section 6372 to the Sales and Use Tax Law to specify that a qualified taxpayer, as defined, that benefits from a business tax incentive enacted on and after January 1, 2012 against the sales and use tax imposed, shall pay a penalty for each net decrease in the number of annual full-time employees, up to the amount of the business tax incentive the qualified taxpayer benefitted for the previous three years.

Among other things, the bill defines the following terms:

- "Qualified taxpayer" would mean a person that is a manufacturer or a person that engaged in R & D in this state with 101 or more employees.
- "Business tax incentive" would mean an exemption or exclusion from the imposition of sales and use tax that is based on qualified wages or the number of persons employed by an act that takes effect on or after January 1, 2012.
- "Net decrease" would mean when the decrease in the number of annual full-time employees in this state in a calendar year that is equal to or greater than 10 percent of the total annual full-time equivalent employees of the qualified taxpayer in this state in the preceding calendar year.

The penalty proposed in the bill would be \$5,000 for each qualified full-time employee that is a net decrease over the decrease of 10 percent of the taxpayer's annual full-time equivalents, as specified. However, the bill would specify that the penalty amount shall not exceed the total value of the business tax incentives that benefitted the taxpayer on the returns for the three preceding calendar year.

Similar provisions would be added to the Personal Income Tax Law and the Corporation Tax Law.

The bill would become operative January 1, 2012.

### COMMENTS

- 1. Sponsor and Purpose.** According to the author's office, the purpose of this bill is to bring needed transparency and accountability to tax breaks given to taxpayers. The author's office notes that this bill will set clear expectations for corporations and guarantee that the state's investment will yield measurable results in the form of job retention and creation.
- 2. The May 3, 2011 amendments** make technical changes. The **April 25, 2011 amendments** define a "qualified taxpayer" to mean a manufacturer or a person that engages in research and development (R & D) activities in this state that benefits from a business tax incentive.

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3. **How would the BOE determine whether an exemption or exclusion was based on qualified wages or the number of persons employed?** The bill would require that the business tax incentives for which a penalty would be imposed must have been based on qualified wages or the number of persons employed. However, it is unclear how the BOE would determine whether the tax incentive was created by the Legislature on that basis. Often, budget bills are enacted that provide exemptions or exclusions without any indication what the basis for that exemption or exclusion was. Consequently, without more specificity in the bill, the effect of the bill may not have the intended result.
4. **Proposed penalty under the Sales and Use Tax Law may provide an incentive for retailers to collect sales tax reimbursement instead of claiming a “business tax incentive.”** The penalty proposed in the bill would be \$5,000 for the loss of each full-time employee that exceeds the allowable net decrease described in the bill, up to the total value of the business tax incentives that benefitted the qualified taxpayer for the previous three years. The bill would define a “business tax incentive” as an exclusion or an exemption from the sales and use tax. With a potential penalty, and the uncertainty in today’s economy as to whether or not a manufacturer or a person engaging in R & D can avoid a net decrease in full time jobs, some may choose to ignore a business tax incentive and continue reimbursing themselves for the tax, despite an exemption or exclusion created by the Legislature. For struggling taxpayers, this could negatively impact their competitiveness with other taxpayers who may be in a better position to claim a business tax incentive, despite the risk of a penalty.
5. **Language issue.** The language imposing the proposed penalty would specify that the penalty shall not exceed an amount equal to the amount of business tax incentives that benefitted the taxpayer. In order to avoid ambiguity, perhaps the language should specify that the penalty shall not exceed the amount of sales tax reimbursement or use tax that the qualified taxpayer would have paid for the previous three years had the business tax incentive not applied.

## COST ESTIMATE

Enactment of this bill would not impact the BOE’s administrative costs, since the effects of the bill would occur when future business tax incentives are enacted. However, should an exemption or exclusion be enacted during this session or in future sessions that become effective on or after January 1, 2012, the BOE would incur costs associated with revising returns to capture the number of employee data required to be reported. Also, the BOE would incur additional audit costs to verify a taxpayer’s number of full time employees, a task not currently performed by BOE auditors.

## REVENUE ESTIMATE

This bill would have no impact on existing state and local sales and use tax revenues, since the bill would only apply to future business tax incentives created by the Legislature.

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